

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION**

ERICK TORRES, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SCHEAR CONSTRUCTION, LLC, a
Florida Limited Liability Company,

Defendant.

Case No. 1:21-cv-04609-PKC-CLP

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S CLASS/
COLLECTIVE ACTION COMPLAINT**

Defendant, SCHEAR CONSTRUCTION, LLC. (“Defendant”) through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 8 and 12 hereby answers Plaintiff’s Class/Collective Action Complaint (Doc. 1) and asserts defenses and affirmative defenses as follows:

NATURE OF THIS ACTION

1. Defendant admits that this action seeks to redress Defendant’s purported policies and practices but denies that Plaintiff is entitled to any relief or that defendants are guilty of any allegation as set forth in Paragraph 1 of the Complaint.
2. Defendant states that the Fair Labor Standards Act (“FLSA”), New York Labor Law (“NYLL”), and Rules and Regulations of the State of New York (“NYCRR”) speak for themselves as to their requirements; Defendant denies the remaining allegations in Paragraph 2 of the Complaint.
3. Defendant denies the allegations in Paragraph 3 of the Complaint.

4. Defendant denies the allegations in Paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. Defendant admits for jurisdiction purposes but otherwise denies the remaining allegations in Paragraph 5 of the Complaint.
6. Defendant admits for jurisdiction purposes but otherwise denies the remaining allegations in Paragraph 6 of the Complaint.
7. Defendant admits for venue purposes but otherwise denies the remaining allegations in Paragraph 7 of the Complaint.

PARTIES

8. Defendant is without knowledge and therefore denies the allegations in Paragraph 8 of the Complaint
9. Defendant admits the allegations in Paragraph 9 of the Complaint.
10. Defendant admits the allegations in Paragraph 10 of the Complaint.

BACKGROUND FACTS

11. Defendant denies the allegations in Paragraph 11 of the Complaint.
12. Defendant denies the allegations in Paragraph 12 of the Complaint.
13. Defendant denies the allegations in Paragraph 13 of the Complaint.
14. Defendant denies the allegations in Paragraph 14 of the Complaint.
15. Defendant denies the allegations in Paragraph 15 of the Complaint.

FLSA COLLECTIVE ACTION ALLEGATIONS

16. Defendant admits that Plaintiff has brought this action under the FLSA, 29 U.S.C. § 216(b) as a collective action, however; Defendant denies that Plaintiff is qualified to represent a

class of individuals, or that there are individuals similarly situated to him and further denies all other allegations in Paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint states a reservation of rights, and makes no factual assertions; to the extent a response is required, Defendant denies.

18. Defendant denies that Plaintiff is qualified to represent a class of individuals, or that there are individuals similarly situated to him and further denies all other allegations in Paragraph 18 of the Complaint.

19. Defendant denies that Plaintiff is qualified to represent a class of individuals, or that there are individuals similarly situated to him and further denies all other allegations in Paragraph 19, and all subparts, of the Complaint.

20. Defendant denies that Plaintiff is qualified to represent a class of individuals, or that there are individuals similarly situated to him and further denies all other allegations in Paragraph 20 of the Complaint.

21. Defendant denies that Plaintiff is qualified to represent a class of individuals, or that there are individuals similarly situated to him and further denies all other allegations in Paragraph 21 of the Complaint.

STATE LAW CLASS ACTION ALLEGATIONS

22. Defendant admits that Plaintiff purports to bring his claims as a class action; however, Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 22 of the Complaint.

23. Defendant states that NYLL speaks for itself; however, Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 23 of the Complaint.

24. Defendant denies the allegations in Paragraph 24 of the Complaint.
25. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 25, and all subparts, of the Complaint.
26. Defendant denies the allegations in Paragraph 26 of the Complaint
27. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 27 of the Complaint.
28. Defendant denies the allegations set forth in Paragraph 28 of the Complaint.
29. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 29 of the Complaint.
30. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 30 of the Complaint.
31. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 31 of the Complaint.
32. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 32 of the Complaint.
33. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 33 of the Complaint.
34. Defendant denies there are individuals similarly situated and that Plaintiff is qualified to represent a class. Defendant denies all other allegations in Paragraph 34 of the Complaint.

FLSA COVERAGE

35. Defendant incorporates and reasserts each and every response set forth in the responses to each of the foregoing allegations as though fully set forth herein. 35

36. Defendant denies the allegations in Paragraph 36 of the Complaint.
37. Defendant denies the allegations in Paragraph 37 of the Complaint.
38. Defendant denies the allegations in Paragraph 38 of the Complaint.
39. Defendant admits the allegations in Paragraph 39 of the Complaint.

CLAIMS FOR RELIEF

COUNT I- VIOLATION OF THE FLSA (OVERTIME)

(On Behalf of the FLSA Collective)

40. Defendant denies there are individuals similarly situated. Defendant denies all other allegations in Paragraph 40 of the Complaint.
41. Defendant denies the allegations in Paragraph 41 of the Complaint.
42. Defendant denies the allegations in Paragraph 42 of the Complaint.
43. Defendant denies the allegations in Paragraph 43 of the Complaint.
44. Defendant denies the allegations in Paragraph 44 of the Complaint.
45. Defendant denies the allegations in Paragraph 45 of the Complaint.
46. Defendant denies the allegations in Paragraph 46 of the Complaint.
47. Defendant denies the allegations in Paragraph 47 of the Complaint.

COUNT II- VIOLATION OF THE FLSA (MINIMUM WAGE)

(On Behalf of the FLSA Collective)

48. Defendant incorporates and reasserts each and every response set forth in the responses to Paragraphs 1-39 as though fully set forth herein.
49. Defendant denies the allegations in Paragraph 48 of the Complaint.
50. Defendant denies the allegations in Paragraph 49 of the Complaint.
51. Defendant denies the allegations in Paragraph 50 of the Complaint.

52. Defendant denies the allegations in Paragraph 51 of the Complaint.

53. Defendant denies the allegations in Paragraph 52 of the Complaint.

54. Defendant denies the allegations in Paragraph 53 of the Complaint.

55. Defendant denies the allegations in Paragraph 54 of the Complaint.

56. Defendant denies the allegations in Paragraph 55 of the Complaint.

COUNT III- VIOLATION OF NEW YORK LABOR LAW §§ 650 *et seq.*

(On Behalf of the NYLL Class)

57. Defendant incorporates and reasserts each and every response set forth in the responses to each of the foregoing allegations as though fully set forth herein. 56

58. Defendant states that NYLL speaks for itself and denies all other allegations in Paragraph 57 of the Complaint.

59. Defendant denies the allegations in Paragraph 58 of the Complaint.

60. Defendant denies the allegations in Paragraph 59 of the Complaint.

61. Defendant denies the allegations in Paragraph 60 of the Complaint.

62. Defendant denies the allegations in Paragraph 61 of the Complaint.

63. Defendant states that NYLL speaks for itself and denies all other allegations in Paragraph 62 of the Complaint.

64. Defendant states that NYLL speaks for itself and denies all other allegations in Paragraph 63 of the Complaint.

65. Defendant states that NYLL speaks for itself and denies all other allegations in Paragraph 64 of the Complaint.

66. Defendant denies the allegations in Paragraph 65 of the Complaint.

COUNT IV- VIOLATION OF THE NYLL § 650 AND NYCRR § 142-2.

(On Behalf of the NYLL Class)

67. Defendant incorporates and reasserts each and every response set forth in the responses to each of the foregoing allegations as though fully set forth herein.
68. Defendant denies the allegations in Paragraph 66 of the Complaint.
69. Defendant denies the allegations in Paragraph 67 of the Complaint.
70. Defendant denies the allegations in Paragraph 68 of the Complaint.
71. Defendant states that NYLL speaks for itself and denies all other allegations in Paragraph 69 of the Complaint.
72. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 70 of the Complaint.
73. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 71 of the Complaint.
74. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 72 of the Complaint.
75. Defendant denies the allegations in Paragraph 73 of the Complaint.
76. Defendant denies the allegations in Paragraph 74 of the Complaint.
77. Defendant denies the allegations in Paragraph 75 of the Complaint.
78. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 76 of the Complaint.
79. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 77 of the Complaint.

80. Defendant states that NYCRR speaks for itself and denies all other allegations in Paragraph 78 of the Complaint.

COUNT IV¹- VIOLATION OF NEW YORK LABOR LAW §§ 190 *et seq.*-

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(On Behalf of the putative NYLL Class)

81. Defendant incorporates and reasserts each and every response set forth in the responses to each of the foregoing allegations as though fully set forth herein. 79

82. Defendant denies the allegations in Paragraph 80 of the Complaint.

83. Defendant denies the allegations in Paragraph 81 of the Complaint.

84. Defendant denies the allegations in Paragraph 82 of the Complaint.

PRAYER FOR RELIEF

Defendant denies all allegations, as well as assertions of entitlement to relief set forth in subsections A-P.

GENERAL DENIAL

Any and all allegations not expressly admitted are denied.

FIRST DEFENSE

Plaintiff's claims and the claims of the class of persons Plaintiff purports to represent are barred to the extent Plaintiff seeks damages beyond the applicable limitations periods, as to the FLSA, NYLL or the NYCRR.

SECOND DEFENSE

Plaintiffs cannot establish that any acts or omissions of Defendant was in willful violation

¹ Plaintiff's Complaint includes two Counts labeled IV, this numbering has been reproduced to match the Complaint.

of wage laws. Accordingly, Plaintiff is not entitled to an extension of the look-back period.

THIRD DEFENSE

To the extent Plaintiff and the class of persons Plaintiff purports to represent are entitled to damages, Defendant is entitled to a credit or set off against amounts overpaid in the course of their employment.

FOURTH DEFENSE

To the extent Plaintiff or the class of persons Plaintiff purports to represent establish they were employees, some or all of the disputed time for which they seek recovery of wages purportedly owed was spent engaged in activities which were not compensable under applicable laws and were not an integral and indispensable part of their principal activities.

FIFTH DEFENSE

Plaintiff's claims are barred to the extent Plaintiff seeks to assert claims on behalf of other individuals who are not similarly situated for purposes of the NYLL, FLSA, or the NYCRR with respect to matters alleged in the Complaint.

SIXTH DEFENSE

Plaintiff fails to satisfy the prerequisites for class or collective certification under the NYLL, FLSA, or the NYCRR and, therefore, cannot represent the interests of others.

SEVENTH DEFENSE

Plaintiff lacks standing to assert the legal rights or interests of others.

EIGHTH DEFENSE

This court lacks jurisdiction over the claims of some of the putative class members.

NINTH DEFENSE

Because Plaintiff's Complaint is phrased in vague and conclusory terms, Defendant cannot

fully anticipate all defenses which may be applicable to this action. Accordingly, the right to assert additional defenses, to the extent such defenses are applicable, is hereby reserved.

Dated this 23rd day of November 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November 2021, the foregoing was electronically filed with the Court by using the Eastern District of New York's CM/ECF portal, which will send a notice of electronic filing to all parties of record.



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